

### REMARKS

This Amendment is submitted in reply to the non-Final Office Action mailed on October 8, 2009. The Office Action provided a three-month shortened statutory period in which to respond, ending on January 8, 2010. Accordingly, this Amendment is timely submitted. Applicant does not believe there to be any fees due herewith this Amendment. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 50-4498 in the name of Nestle Nutrition.

Claims 2-3, 7-8, 11-30 and 33-36 are currently pending. Claims 25-26 were previously withdrawn and Claims 1, 4-6, 9-10 and 31-32 were previously canceled without prejudice or disclaimer. In the Office Action, Claims 30 and 33-36 are rejected under 35 U.S.C. §102. Claims 2-3, 7-8, 11-24 and 27-29 are rejected under 35 U.S.C. §103. In response, Claims 2-3, 7 and 20 have been amended and Claims 8 and 21 have been canceled without prejudice or disclaimer. These amendments do not add new matter. The amendments are supported in the specification at, for example, page 11, line 20-12, line 16; page 16, line 21-page 17, line 19. Applicant reserves the right to pursue the withdrawn claims in a divisional or continuation application, if not rejoined upon allowance of the pending product claims. Applicant does not acquiesce in the correctness of the rejections or objections and reserves the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application. In view of the amendments and/or for the reasons set forth below, Applicant respectfully submits that the rejections should be withdrawn.

In the Office Action, Claims 30 and 33-36 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publ. No. 2003/0226855 to Allanson et al. ("*Allanson*"). In view of the amendments and/or for the reasons set forth below, Applicant respectfully submits that the cited reference is deficient with respect to the present claims.

Currently amended independent Claim 30 recites, in part, a connector device comprising a rigid tube part, said rigid tube part having formed integrally therewith at about said second end a first rim means comprising a rigid material and a second rim means comprising a flexible material more distal thereon. The amendment does not add new matter and is supported in the

specification at, for example, page 16, line 21-page 17, line 19. As discussed in the specification, connector device can be manufactured by molding, an in particular flexible rim can be manufactured by co-molding it together with the remainder of connector device in a single step. In an embodiment, the whole connector device may be molded from a rigid material and, in another embodiment, the first rim and second rim may be made of different material but co-molded together. See, specification, page 16, line 21-page 17, line 19. Such a configuration provides a connector device with improved strength and integrity. In contrast, Applicant respectfully submits that *Allanson* is deficient with respect to the present claims.

For example, *Allanson* fails to disclose or suggest a connector device comprising a rigid tube part, said rigid tube part having formed integrally therewith at about said second end a first rim means comprising a rigid material and a second rim means comprising a flexible material more distal thereon as is required, in part, by independent Claim 30. Instead, *Allanson* discloses a tube 10, a hinge plate 20, an elastomeric seal 70 (cited by the Patent Office as a flexible rim) and a clamp ring 60 (cited by the Patent Office as a rigid rim), which are all separately manufactured parts. See, *Allanson*, page 4, [0040]; FIGS. 1 and 10. Indeed, *Allanson* even discloses that “seal 70 may be slid along the body of tube 10” and that “[c]lamp ring 60 is [] threaded onto elongate tube 10.” See, *Allanson*, page 4, [0038], [0040]. This is in direct contrast to the present claims that require the rigid tube to have formed integrally therewith first and second rim means.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. For at least these reasons, Applicant respectfully submits that *Allanson* fails to anticipate the presently claimed subject matter.

For at least the reasons discussed above, Applicant respectfully submits that Claims 30 and 33-36 are novel, nonobvious and distinguishable from the cited reference and are in condition for allowance.

Therefore, Applicant respectfully requests that the rejections of Claims 30 and 33-36 under 35 U.S.C. §102 as anticipated be reconsidered and withdrawn.

In the Office Action, Claims 2-3, 7-8, 11, 13, 17, 19, 24 and 27-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0104246 to Kawaguchi, et al. ("*Kawaguchi*") in view of U.S. Patent No. 2,668,533 to Evans ("*Evans*") and further in view of *Allanson*. In view of the amendment and/or for at least the reasons set forth below, Applicant respectfully submits that the cited references are deficient with respect to the present claims.

Currently amended independent Claim 2 has been amended to recite, in part, a connector device comprising a cutting member for opening the laminated paper packaging system upon screwing the connector device onto the laminated paper packaging system, the cutting member protrudes from an interior of the first means. The amendments do not add new matter and are supported in the specification at, for example, page 11, line 20-page 12, line 16. Connector device can be manufactured by molding, such that all parts of the connector device may be formed integrally therewith. In an embodiment, opening means includes a cutting member protruding from connector device on an interior of first means in a direction toward a laminated paper packaging system by pressing connector device thereto and/or by screwing connector device onto frame-like member, cutting member cuts laminated paper packaging system establishing a passageway for the fluid from the interior of laminated paper packaging system through connector device into feeding line of enteral administration set. See, specification, page 11, line 20-page 12, line 16. In contrast, Applicant respectfully submits that the cited references fail to disclose each and every element of the present claims.

For example, *Kawaguchi*, *Evans* and *Allanson* fail to disclose or suggest a connector device comprising a cutting member for opening the laminated paper packaging system upon screwing the connector device onto the laminated paper packaging system, wherein the cutting member protrudes from an interior of the first means as required, in part, by the present claims. Instead, *Kawaguchi* discloses a beverage pack adapter having a pipe-shaped adapter body 12

whose distal end is inserted into an opening 21. The adapter body 12 comprises a pointed end 12a for puncturing a film 21a of a beverage pack. See, *Kawaguchi*, page 2, [0027]-[0029]. At no place in the disclosure does *Kawaguchi* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means.

*Evans* is entirely directed to a medical device for administration of medical liquids that is designed for complete sterilizing thereof and for economical manufacture. See, *Evans*, column 1, lines 1-23. At no place in the disclosure does *Evans* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means. Indeed, the Patent Office cites *Evans* simply for the disclosure of venting means. See, Office Action, page 9, lines 1-5.

As discussed above, *Allanson* is entirely directed to a tube 10, a hinge plate 20, an elastomeric seal 70 and a clamp ring 60, which are all separately manufactured parts. See, *Allanson*, page 4, [0040]; FIGS. 1 and 10. At no place in the disclosure does *Allanson* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means.

Accordingly, Applicant respectfully submits that the cited references fail to disclose or suggest each and every element of the present claims.

Currently amended independent Claim 7 has been amended to recite, in part, a tubular first spike for penetrating the first surface of the laminated paper packaging system and defining a second part of the passageway, the first spike defining a point, a first rim for fixedly attaching the connector device to the first surface of the laminated paper packaging system upon penetration of the first spike and pressing of the connector device against the first surface of the laminated paper packaging system, the first rim formed of a rigid material and integrally with the connector device, the first rim located a first distance from the point of the first spike, and a second rim for fixedly attaching the connector device to an interior surface within said laminated paper packaging system, the second rim formed of a flexible material and integrally with the connector device, the second rim located a second distance from the point of the spike, the second distance being less than the first distance. The amendments do not add new matter and are supported in the specification at, for example, page 16, line 21-page 17, line 19.

As discussed in the specification, a connector device 1 shown on the left hand side in FIG. 5 comprises section 5, i.e. tube portion, for attachment of the feeding line of the enteral administration set. Two rims 50,51 are provided. Rims 50, 51 may extend in parallel around spike 20 and may be axially spaced from each other at a predetermined distance. This predetermined distance may be chosen such that laminated paper packaging system 4 and aluminum foil 17 are fittingly arranged between rim 50 and rim 51. Rim 51, which is arranged nearer to the point of spike 20, is made from a flexible material whereas rim 50 is made from a rigid material. The flexibility of rim 51 is important in this embodiment because rim 51 must be introduced through hole 21 (see FIG. 4) into the interior of the laminated paper packaging system without damaging the laminated paper packaging system. In order to allow such introduction, rim 51 must be sufficiently flexible. Once spike 20 has been introduced into the interior of laminated paper packaging system 4 laminated paper packaging system 4 and aluminum foil 17 are fittingly compressed between rim 51 and rim 50 thus establishing a tight fit. Composition may then exit from the interior of laminated paper packaging system 4 through the established passageway 5a. See, specification, page 16, line 21-page 17, line 19.

Further, the specification also states that connector device can be manufactured by molding, an in particular flexible rim can be manufactured by co-molding it together with the remainder of connector device in a single step. In an embodiment, the whole connector device may be molded from a rigid material and, in another embodiment, the first rim and second rim may be made of different material but co-molded together. See, specification, page 17, lines 4-19. Such a configuration provides a connector device with improved strength and integrity. In contrast, Applicant respectfully submits that the cited references fail to disclose each and every element of the present claims.

For example, *Kamaguchi, Evans* and *Allanson* fail to disclose or suggest a tubular first spike for penetrating the first surface of the laminated paper packaging system and defining a second part of the passageway, the first spike defining a point, a first rim for fixedly attaching the connector device to the first surface of the laminated paper packaging system upon penetration of the first spike and pressing of the connector device against the first surface of the laminated paper packaging system, the first rim formed of a rigid material and integrally with the connector device, the first rim located a first distance from the point of the first spike, and a

second rim for fixedly attaching the connector device to an interior surface within said laminated paper packaging system, the second rim formed of a flexible material and integrally with the connector device, the second rim located a second distance from the point of the spike, the second distance being less than the first distance as is required, in part, by independent Claim 7.

Instead, *Kawaguchi* discloses an elongated pipe adapter body 12 that can be fixed to a beverage pack through a hole on the beverage pack. The elongated pipe adapter body 12 has a passage 12g for fluid to pass through. See *Kawaguchi*, Figures 1-2. The elongated pipe adapter body 12 is designed so that the top joint 12 of the body 12 can be fitted within a tube 30. The elongated pipe adapter body 12 also has a bottom pointed end 12 that fits entirely within a fixing member 14 and the beverage pack. As a result, most of the entire elongated pipe adapter body 12 is within positioned within the tube 30 and the fixing member 14 and the beverage pack during operation. At no place in the disclosure does *Kawaguchi* disclose or suggest a first rigid rim and a second flexible rim formed integrally with the connector device.

*Evans* discloses an outlet member 18 having parallel passages 36 and 38 for fluid flow and for venting, respectively. See *Evans*, Figures 1-2. The outlet member 18 is designed so that the entire cylindrical tip portion 20 fits into a hole of a bottle 10. Meanwhile, the outlet member 18 has a bottom portion 34 that has a passage 40 to receive a tip of a bottle 24 while the other parallel passage 38 is vented open to the air (via the check valve ball 56 and the filter medium 58). At no place in the disclosure does *Evans* disclose or suggest a first rigid rim and a second flexible rim formed integrally with the connector device.

*Allanson* discloses a tube 10, a hinge plate 20, an elastomeric seal 70 (cited by the Patent Office as a flexible rim) and a clamp ring 60 (cited by the Patent Office as a rigid rim), which are all separately manufactured parts. See, *Allanson*, page 4, [0040]; FIGS. 1 and 10. Indeed, *Allanson* even discloses that “seal 70 may be slid along the body of tube 10” and that “[c]lamp ring 60 is [] threaded onto elongate tube 10.” See, *Allanson*, page 4, [0038], [0040]. This is in direct contrast to the present claims that require the rigid tube to have formed integrally therewith first and second rim means. At no place in the disclosure does *Allanson* disclose or suggest a first rigid rim and a second flexible rim formed integrally with the connector device. For at least the above-mentioned reasons, Applicant respectfully submits that the cited references fail to disclose or suggest each and every element of the present claims.

Applicant respectfully submits that it is only with a hindsight reconstruction of Applicant's claimed invention that the Patent Office is able to even attempt to piece together the teachings of the prior art so that the claimed invention is allegedly rendered obvious. However, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

In sum, the cited references fail to even recognize the advantages, benefits and/or properties of the connector devices in accordance with the present claims. For at least the reasons discussed above, Applicant respectfully submits that Claims 2-3, 7-8, 11, 13, 17, 19, 24 and 27-28 are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicant respectfully requests that the rejections of Claims 2-3, 7-8, 11, 13, 17, 19, 24 and 27-28 under 35 U.S.C. §103 be reconsidered and withdrawn.

Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi* in view of *Evans*, in view of *Allanson* and further in view of U.S. Patent No. 4,921,139 to Quinn et al. ("*Quinn*"). Claims 14, 16 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi* in view of *Evans* and *Allanson* and further in view of U.S. Patent No. 5,993,422 to Schafer ("*Schafer*"). Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kawaguchi*, in view of *Evans* and *Allanson* and further in view of U.S. Patent No. 2,969,063 to Broman ("*Broman*"). Applicant respectfully submits that the patentability of Claims 2 and 7 as previously discussed renders moot the obviousness rejections of Claims 12, 14-16 and 18 that depend therefrom. In this regard, the cited art fails to teach or suggest the elements of Claims 12, 14-16 and 18 in combination with the novel elements of Claims 2 and 7.

In the Office Action, Claims 20-23 and 29 are rejected under 35 U.S.C. §103 as being unpatentable over *Kawaguchi* in view of U.S. Patent No. 4,801,007 to Rule ("*Rule*") in further view of U.S. Patent No. 5,141,133 to Ninomiya ("*Ninomiya*"). Applicant respectfully submits that the cited references are deficient with respect to the present claims.

Currently amended independent Claim 20 recites, in part, a connector device comprising a cutting member rotatable with the connector device upon screwing the connector device onto the frame-like member of the packaging system, the cutting member projecting toward the surface such that the cutting member first cuts the surface only after engagement of the first means of the connector device with the first threaded portion of the packaging system, the cutting member is integrally formed with first means and protrudes from an interior of the second part of the first means. The amendment does not add new matter and is supported in the specification at, for example, page 11, line 21-page 12, line 16. As discussed above, connector device can be manufactured by molding, such that all parts of the connector device may be formed integrally therewith. In an embodiment, opening means includes a cutting member protruding from connector device on an interior of first means in a direction toward a laminated paper packaging system by pressing connector device thereto and/or by screwing connector device onto frame-like member, cutting member cuts laminated paper packaging system establishing a passageway for the fluid from the interior of laminated paper packaging system through connector device into feeding line of enteral administration set. See, specification, page 11, line 21-page 12, line 16. In contrast, Applicant respectfully submits that the cited references are deficient with respect to the present claims.

For example, *Kawaguchi*, *Rule* and *Ninomiya* all fail to disclose or suggest a connector device comprising a cutting member rotatable with the connector device upon screwing the connector device onto the frame-like member of the packaging system, the cutting member projecting toward the surface such that the cutting member first cuts the surface only after engagement of the first means of the connector device with the first threaded portion of the packaging system, wherein the cutting member is integrally formed with first means and protrudes from an interior of the first means as required, in part, by the present claims. Instead, *Kawaguchi* discloses a beverage pack adapter having a pipe-shaped adapter body 12 whose distal end is inserted into an opening 21. The adapter body 12 comprises a pointed end 12a for puncturing a film 21a of a beverage pack. See, *Kawaguchi*, page 2, [0027]-[0029]. At no place in the disclosure does *Kawaguchi* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means.



*Rule* discloses a tubular teat mounting 21 having a passage. The tubular teat mounting 21 has a top portion that is entirely covered by a teat. See *Rule*, Figures 4-7. The tubular teat mounting 21 also has a bottom spike 34 that is designed to fit entirely within a container 11. At no place in the disclosure does *Rule* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means.

*Ninomiya* discloses a pouring plug having a tubular body 1 and a lid 2 that fits within the tubular body 1. The lid 2 includes a bottom edge portion having a saw tooth blade 12a. The pouring plug is designed to fit on top of the container with only the saw tooth blade 12a rupturing a surface of the container. See *Ninomiya*, Figure 4. As a result, most of the tubular body 1 and a lid 2 does not enter the container. Further, at no place in the disclosure does *Ninomiya* disclose any structure that even resembles a first means that has first and second parts, let alone a cutting member integrally formed with first means and protruding from an interior of first means. Accordingly, *Kawaguchi*, *Rule* and *Ninomiya* all fail to disclose or suggest each and every element of the present claims.

In addition, Applicant further submits that the skilled artisan would have no reason to combine *Ninomiya* with *Kawaguchi* and *Rule* to arrive at independent Claim 20 because the cited references are entirely directed to devices having different modes of operation. As previously discussed, *Kawaguchi* discloses an elongated pipe adapter body 12 where most of the entire elongated pipe adapter body 12 is within positioned within the tube 30 and the fixing member 14 and the beverage pack during operation. Similarly, *Rule* discloses a tubular teat mounting 21 having a passage having a top portion that is entirely covered by a teat and a bottom spike 34 that is designed to fit entirely within a container 11.

In contrast, *Ninomiya* discloses a pouring plug having a tubular body 1 and a lid 2 that fits within the tubular body 1. The lid 2 includes a bottom edge portion having a saw tooth blade 12a. The pouring plug is designed to fit on top of the container with only the saw tooth blade 12a rupturing a surface of the container. See *Ninomiya*, Figure 4. As a result, most of the tubular body 1 and a lid 2 does not enter the container.

On the other hand, *Kawaguchi* and *Rule* disclose devices where the entire bottom portions of the devices are designed to enter and fit within the container and container walls. For

example, the elongated pipe adapter body of *Kawaguchi* includes the bottom pointed end that fits within the container to form a tight fluid flow with the container wall. See *Kawaguchi*, Figure 4. The tubular teat mounting of *Rule* has the bottom spike that is designed to fit and be locked entirely within the container. In view of the teachings of *Kawaguchi* and *Rule*, Applicant respectfully submits that the skilled artisan would not shorten the bottom pointed end of the elongated pipe adapter body in *Kawaguchi* or the bottom spike of the tubular teat mounting of *Rule* in view of *Ninomiya* because to do so would render the devices of *Kawaguchi* and *Rule* inoperable.

The Patent Office submits that *Kawaguchi* and *Rule* only require that a tube extend into a container far enough to withdraw liquid and that *Kawaguchi* touts the advantages of a short tube. See, Office Action, page 21, line 13- page 22, lines 3. However, Applicant respectfully disagrees since there exists no tube on *Ninomiya* that is used to extract a liquid. Instead, the only portion of the device of *Ninomiya* that enters the container is a very small portion of the cutting member teeth so that the teeth may rupture the film of the container. Indeed, when the container contents are removed from the container of *Ninomiya*, the contents must be poured out of a spout, not removed via the use of a tube. Accordingly, nothing in *Ninomiya* would direct the skilled artisan to the combination with references using tubes such as *Kawaguchi* and *Rule*.

Applicant respectfully submits that it is only with a hindsight reconstruction of Applicant's claimed invention that the Patent Office is able to even attempt to piece together the teachings of the prior art so that the claimed invention is allegedly rendered obvious. However, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

For at least the above-mentioned reasons, Applicant respectfully submits that Claims 20-23 and 29 are novel, nonobvious and patentable in view of the cited references.

Accordingly, Applicant respectfully submits that the rejection of Claims 20-23 and 29 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

Nestle Nutrition  
12 Vreeland Road, 2<sup>nd</sup> Floor  
Florham Park, NJ 07932  
(973) 593-7553

BY           /gml/            
Gary M. Lobel  
Attorney for Appellant  
Reg. No. 51,155

Dated: January 4, 2010